

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department on its own motion into the appropriate regulatory plan to succeed price cap regulation for Verizon New England, Inc. d/b/a Verizon Massachusetts' retail intrastate telecommunications services in the Commonwealth of Massachusetts

DTE 01-31

**MOTION OF AT&T COMMUNICATIONS OF NEW ENGLAND, INC.
FOR PROTECTIVE TREATMENT OF CONFIDENTIAL INFORMATION**

AT&T Communications of New England, Inc. ("AT&T") hereby requests that the Department of Telecommunications and Energy (the "Department") grant protection from public disclosure of certain confidential, competitively sensitive and proprietary information submitted in this proceeding in accordance with G.L. c. 25, § 5D. Specifically, AT&T requests that the proprietary information included in the Testimony of Anthony Fea be granted the highest level of protective treatment because it is competitively sensitive and highly proprietary. Redacted versions of this testimony have been provided to all other parties.

I. LEGAL STANDARD.

Confidential information may be protected from public disclosure in accordance with G.L. c. 25, § 5D, which states in part that:

The [D]epartment may protect from public disclosure trade secrets, confidential, competitively sensitive or other proprietary information provided in the course of proceedings conducted pursuant to this chapter. There shall be a presumption that the information for which such protection is sought is public information and the burden shall be on the proponent of such protection to prove the need for such protection. Where the need has been found to exist, the [D]epartment shall protect only so much of the information as is necessary to meet such need.

The Department has recognized that competitively sensitive information is entitled to protective status. *See, e.g., Hearing Officer's Ruling On the Motion of CMRS Providers for Protective Treatment and Requests for Non-Disclosure Agreement*, D.P.U. 95-59B, at 7-8 (1997) (the Department recognized that competitively sensitive and proprietary information should be protected and that such protection is desirable as a matter of public policy in a competitive market).

II. ARGUMENT.

The information contained in the Testimony of Anthony Fea is competitively sensitive, proprietary, and confidential. The testimony provides the percentage of customers AT&T services using its own facilities, referred to as "Type I" provisioning. The testimony also provides the percentage of customers AT&T services using equipment and facilities leased from other carriers, otherwise known as "Type II" provisioning. The possession of this information would provide AT&T's competitors with a significant competitive advantage.

The information described above provides insight into AT&T's internal decision-making processes and sheds light on AT&T's marketing plans and entry strategy. Moreover, to the extent that AT&T's level of customer service depends on its "Type" of provisioning, disclosure of this information gives competing carriers knowledge about the level of service AT&T may provide to the percentages of customers specified in Anthony Fea's testimony. As Bell Atlantic pointed out in a Motion for Confidential Treatment filed on October 26, 1999 in D.T.E. 99-271, "[information that provides] competitors of those carriers with valuable information regarding each individual carrier's marketing plans, entry strategy, and changes in market share... is precisely the type of data the G.L. c. 25, § 5D authorizes the Department to protect from public disclosure." *See* Bell Atlantic's Motion for Confidential Treatment, D.T.E. 99-271, at 2 (October 26, 1999). In other dockets, Verizon has refused to provide similar information to any

of the participants and has requested the highest level of confidential treatment. The proprietary information in the Testimony of Anthony Fea should be granted the same level of protection.

Conclusion.

For these reasons, AT&T requests in accordance with G.L. c. 25, § 5D, that the Department grant the highest level of protective treatment to the proprietary information contained in the Testimony of Anthony Fea.

Respectfully submitted,

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